

Agenda

Environmental Protection Commission

ELECTRONIC MEETING

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July 6, 1995

9:00 A.M.

Wallace State Office Building, Fourth Floor

Agenda topics

1. Final Rule--Chapter 145, Household Batteries Teresa Hay (Decision)

ENVIRONMENTAL PROTECTION COMMISSION
ELECTRONIC MEETING

July 6, 1995

NAME

COMPANY OR AGENCY

CITY

(PLEASE PRINT)

STEVE ROBERTS
Kathy Casen

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**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

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DECISION

TOPIC

Final Rule Chapter 145 "Household Batteries"

The Commission is requested to approve the proposed rule relating to the use and regulation of household batteries. Chapter 145, "Household Batteries" Iowa Administrative Code is proposed to implement Iowa code sections 455D.10A and 455D.10B.

Iowa code sections 455D.10A and 455D.10B establish laws and standards regarding the management of household batteries. These laws include: 1) a limit on the amount of mercury added to household batteries; 2) the management of nickel-cadmium, mercuric oxide and smaller sealed lead acid batteries by reducing the toxics, establishing a recycling program or establishing a disposal program; and 3) a requirement that rechargeable batteries are easily removed from rechargeable consumer products. The rechargeable battery, rechargeable consumer product and the product package must be labeled to indicate that these batteries must be managed through recycling or proper disposal.

The proposed rule clarifies the responsibilities of household battery manufacturers, distributors, dealers, and consumers regarding the recycling and proper disposal requirements for nickel-cadmium, mercuric oxide and smaller sealed lead-acid batteries. This rule is meant to be read in conjunction with 455D.10A and 455D.10B.

A meeting was held with battery manufacturer representatives on Tuesday, June 27. A mutual agreement was reached with the manufacturer representatives at that time. The proposed changes are outlined below.

Subsection 145.4(1)a was subdivided into two sections. Paragraph "a" requires the participation of all the "participants in the stream of commerce" for the proper collection, transportation, recycling and disposal of nickel cadmium batteries. Since the nickel cadmium battery manufacturers have already submitted a plan whereby they will take the lead in establishing a program to properly manage waste nickel cadmium batteries, subsection 145.4(1)"a" was created.

567--145.4(455B, 455D) Recycling/Disposal Requirements for Household Batteries.

145.4(1)a. In the case of waste nickel cadmium batteries it is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

Paragraph "b" places the responsibility of establishing and maintaining a collection system for waste sealed lead acid batteries upon the manufacturers of those battery types, working with the "participants in the stream of commerce". The purpose of this paragraph is to ensure that the sealed lead acid battery manufacturers will provide the impetus to establish a collection program for waste sealed lead acid batteries. The Department feels that a concerted effort, on the part of the manufacturers, will be needed to get cooperation from the other "participants" to achieve the highest return rate possible.

145.4(1)b. In the case of waste sealed lead acid batteries and waste mercuric oxide batteries it is the responsibility of the manufacturers working with the other participants in the stream of commerce, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

Subsection 145.4(3) was changed to reflect that a household consumer will not be required to pay for any collection, disposition and recycling activities after the original purchase of a battery. An institutional generator or other business may have to pay freight to ship batteries to a collection or recycling point. A sentence from the existing Code language was also added to this subsection that requires institutional generators to provide for the source separation of batteries.

145.4(3) A consumer, that is not an institutional generator, shall not be required to pay for any collection, disposition and recycling activities after the original purchase of the battery. However these charges may be built into the original cost of the product. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries.

The proposed rule is attached.

Teresa D. Hay
Administrator
Waste Management Division

Attachment

June 28, 1995

Environmental Protection [567]

CHAPTER 145 HOUSEHOLD BATTERIES

567--145.1(455B, 455D) Scope. This chapter is intended to assist the implementation of the provisions of Iowa Code sections 455D.10A and 455D.10B. The Act limits the amount of mercury added to an alkaline manganese battery and prohibits the disposal of batteries specified in 455D.10A(3)"a"(1) as part of the mixed municipal solid waste stream. All consumers shall be informed of this prohibition on disposal. The Act further requires the establishment of a system or systems that would require any or all of the following: elimination or reduction of heavy metals or other toxic components, establishment of a comprehensive recycling program, or collection, transport, and proper disposal of the specified batteries.

Household batteries in rechargeable consumer products shall be easily removable or contained in a battery pack. The rechargeable consumer product, the battery, and the product package shall be labeled to notify the consumer of the need to recycle and of the type of electrode used in the battery.

These provisions will further ensure the protection of the state's groundwater resources while protecting the health and safety of the citizens of Iowa and the environment as a whole.

567--145.2(455B, 455D) Definitions. As used in this chapter in addition to the definitions set forth in code section 455D.10A:

"*Act*" means Iowa Code sections 455D.10A and 455D.10B.

"*Alkaline manganese battery*" means a battery consisting of a manganese dioxide positive electrode, a zinc negative electrode and an alkaline electrolyte.

"*Battery pack*" means one or more batteries enclosed in a housing.

"*Collection entity*" is defined in 455D.10A(3)"b"(1).

"*Collection system*" means a system or systems in which household batteries, as specified in 455D.10A(3)"a"(1), are collected by several methods to be recycled or properly disposed. The methods include but are not limited to: point of purchase return, mail-in return, a combination of both or a collection entity.

"*Dealer*" means any person who sells or otherwise offers household batteries to a consumer.

"*Department*" means the Iowa department of natural resources.

"*Distributor*" means any person who sells or otherwise offers household batteries to dealers.

"*Institutional generator*" is defined in 455D.10A(1)"e".

"*Manufacturer*" means any person who manufactures or offers household batteries for sale to distributors or dealers. The manufacturer's name that appears on the battery or rechargeable consumer product shall be presumed to be the manufacturer.

"*Mercuric oxide battery*" means a battery consisting of a mercuric oxide positive electrode and a zinc negative electrode.

"Nickel-cadmium battery" means a battery consisting of a nickel positive electrode and a cadmium negative electrode.

"Participants in the stream of commerce" means any dealer, distributor or manufacturer who is involved in the manufacturing, distribution, or sale of household batteries specified in 455D.10A(3)"a"(1).

"Sealed lead-acid battery" means a battery consisting of positive and negative electrode materials which are leads or compounds thereof, used in nonvehicular applications and weighing less than twenty-five pounds.

"Unreasonable hazard to public health, safety, or the environment" means a situation caused by the improper disposal of an item that is flammable, corrosive, toxic, or reactive, as defined by EPA regulations, that may result in harm to the public health, safety, or the environment. The harm created from improper disposal may be evident immediately or after a period of time. This definition relates to 455D.10B(2)"c".

567--145.3(455B, 455D) Household Batteries.

Any and all batteries specified in 455D.10A and 455D.10B that are used for any and all purposes are covered by this Act, except those batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

1. Only button cell batteries containing mercuric oxide are included in this collection program for recycling or proper disposal. Mercuric oxide button cell batteries shall bear an appropriate identification mark. (Non mercuric oxide button cell batteries are not included in this collection program for recycling or proper disposal.)

2. Only rechargeable dry cell batteries containing nickel-cadmium (i.e. rechargeable kitchen appliances, rechargeable power tools and other household applications) are included in this collection program for recycling or proper disposal. (This collection or proper disposal program would not include non-rechargeable batteries used in radios, flashlights and other household applications.)

3. Only sealed lead-acid batteries used in non-vehicular rechargeable (i.e. camcorders, computers, cellular phones and other household applications) products weighing less than 25 pounds are included in this collection program for recycling or proper disposal.

567--145.4(455B, 455D) Recycling/Disposal Requirements for Household Batteries.

145.4(1)a. In the case of waste nickel cadmium batteries it is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

145.4(1)b. In the case of waste sealed lead acid batteries and waste mercuric oxide batteries it is the responsibility of the manufacturers working with the other participants in the stream of commerce, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

145.4(2) The manufacturers shall provide a plan to the department, by May 1, 1996, that specifically identifies a system or systems for the proper collection, transportation and recycling or disposal of, the specified, waste household batteries. This information shall identify transporters and recycling or disposal destinations.

145.4(3) A consumer, that is not an institutional generator, shall not be required to pay for any collection, disposition and recycling activities after the original purchase of the battery. However these charges may be built into the original cost of the product. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries.

145.4(4) As part of the requirement of informing each consumer of the safe and convenient return process available for recycling or proper disposal of waste batteries, pursuant to Iowa code subsection 455D.10A(3)"b"(2), a manufacturer shall provide a telephone number to each consumer of the specified batteries that provides information on returning these batteries for recycling or proper disposal. This telephone number shall also be provided to the department.

567--145.5(455B, 455D) Exemptions for batteries used in rechargeable consumer products.

A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of 455D.10B(1). An application for exemption from these requirements shall be submitted on 8 1/2 x 11 inch paper and contain:

- a. The name, address, and telephone number of the applicant and the applicant's contact;
- b. A statement setting forth the specific basis upon which the exemption is sought.

The information required pursuant to this subsection shall be furnished to the department for each specified rechargeable consumer product for which an exemption is sought. The department shall approve or deny an exemption upon receipt of an application therefor. Allowable exemptions are specified in 455D.10B(2) "a" through "d".

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MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
ELECTRONIC MEETING

JULY 6, 1995

WALLACE STATE OFFICE BUILDING
DES MOINES, IOWA

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MEETING MINUTES

CALL TO ORDER

The electronic meeting of the Environmental Protection Commission was held on the fourth floor of the Wallace State Office Building, Des Moines, Iowa convening at 9:10 a.m. on Thursday, July 6, 1995.

MEMBERS PRESENT

Roll call was taken by Director Wilson and the following Commissioners were present:

Kathryn Draeger
William Ehm
Michael Fesler
Rozanne King, Chair
Charlotte Mohr, Secretary
Kathryn Murphy
Gary Priebe, Vice-Chair
Terrance Townsend

MEMBERS ABSENT

Verlon Britt

Director Wilson noted that Verlon Britt telephoned to say he has a conflict and will not be able to participate in the meeting.

Director Wilson stated that the meeting was duly noticed to the media, and those present in his office for the meeting include himself, Deputy Director-Don Paulin, and staff members Teresa Hay and Junie Gookin. Members of the public in attendance were Steve Roberts, PBRA, and Kathy Clasen, IDED.

FINAL RULE--CHAPTER 145, HOUSEHOLD BATTERIES

Teresa Hay, Division Administrator, Waste Management Assistance Division, presented the following item.

The Commission is requested to approve the proposed rule relating to the use and regulation of household batteries. Chapter 145, "Household Batteries" Iowa Administrative Code is proposed to implement Iowa code sections 455D.10A and 455D.10B.

Iowa code sections 455D.10A and 455D.10B establish laws and standards regarding the management of household batteries. These laws include: 1) a limit on the amount of mercury added to household batteries; 2) the management of nickel-cadmium, mercuric oxide and smaller

sealed lead acid batteries by reducing the toxics, establishing a recycling program or establishing a disposal program; and 3) a requirement that rechargeable batteries are easily removed from rechargeable consumer products. The rechargeable battery, rechargeable consumer product and the product package must be labeled to indicate that these batteries must be managed through recycling or proper disposal.

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A meeting was held with battery manufacturer representatives on Tuesday, June 27. A mutual agreement was reached with the manufacturer representatives at that time. The proposed changes are outlined below.

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567--145.4(455B, 455D) Recycling/Disposal Requirements for Household Batteries.

145.4(1)a. In the case of waste nickel cadmium batteries it is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

Paragraph "b" places the responsibility of establishing and maintaining a collection system for waste sealed lead acid batteries upon the manufacturers of those battery types, working with the "participants in the stream of commerce." The purpose of this paragraph is to ensure that the sealed lead acid battery manufacturers will provide the impetus to establish a collection program for waste sealed lead acid batteries. The Department feels that a concerted effort, on the part of the manufacturers, will be needed to get cooperation from the other "participants" to achieve the highest return rate possible.

145.4(1)b. In the case of waste sealed lead acid batteries and waste mercuric oxide batteries it is the responsibility of the manufacturers working with the other participants in the stream of commerce, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

Subsection 145.4(3) was changed to reflect that a household consumer will not be required to pay for any collection, disposition and recycling activities after the original purchase of a

battery. An institutional generator or other business may have to pay freight to ship batteries to a collection or recycling point. A sentence from the existing Code language was also added to this subsection that requires institutional generators to provide for the source separation of batteries.

145.4(3) A consumer, that is not an institutional generator, shall not be required to pay for any collection, disposition and recycling activities after the original purchase of the battery. However these charges may be built into the original cost of the product. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries.

The proposed rule is attached.

Environmental Protection [567]

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145.4(1)a. In the case of waste nickel cadmium batteries it is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal

of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

145.4(1)b. In the case of waste sealed lead acid batteries and waste mercuric oxide batteries it is the responsibility of the manufacturers working with the other participants in the stream of commerce, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries , specified in 455D.10A(d)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

145.4(2) The manufacturers shall provide a plan to the department, by May 1, 1996, that specifically identifies a system or systems for the proper collection, transportation and recycling or disposal of, the specified, waste household batteries. This information shall identify, to the extent possible, transporters and recycling or disposal destinations.

145.4(3) A consumer, that is not an institutional generator, shall not be required to pay for any collection, disposition and recycling activities after the original purchase of the battery. However these charges may be built into the original cost of the product. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries.

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- a. The name, address, and telephone number of the applicant and the applicant's contact;
- b. A statement setting forth the specific basis upon which the exemption is sought.

The information required pursuant to this subsection shall be furnished to the department for each specified rechargeable consumer product for which an exemption is sought. The department shall approve or deny an exemption upon receipt of an application therefor. Allowable exemptions are specified in 455D.10B(2) "a" through "d".

Ms. Hay stated that following the June Commission meeting she and staff met with representatives of the battery industry, specifically Mike Lynch-Illinois Tool Works (ITW), Steve Roberts-PRBA, and Stuart Hudnut-ITW. The first of three primary points discussed during that meeting was Section 145.4, which in its original language stated that it would be the ultimate responsibility of the manufacturers working with the other members of the stream of commerce to provide for the collection and recycling of household batteries. She related that the language set forth as a result of the meeting distinguishes between the manufacturers of nickel

cadmium batteries and the manufacturers of sealed lead acid batteries and mercuric oxide batteries. The nickel cadmium batteries are produced by companies like ITW and are included in the PRBA plan. As a result of that plan, staff has agreed to change the language so that, in the case of nickel cadmium batteries, all participants in the stream of commerce would be responsible for the program rather than having the ultimate responsibility lie only with industry. Ms. Hay pointed out that in the case of sealed lead acid batteries there is not any kind of specific plan for collection and recycling of those batteries. Due to the lack of a plan on the part of the manufacturers of those types of batteries, it was felt that the original language should remain in place for those batteries.

Ms. Hay explained that the second change is in 145.4(2), whereas the last sentence was changed by adding the words "to the extent possible." The revised language currently reads: "This information shall identify, to the extent possible, transporters and recycling or disposal destinations."

Ms. Hay noted that a significant language change was made in 145.4(3), which addresses whether or not a consumer can be charged for the collection and recycling activity after they have purchased a battery, such as when they bring the battery back for recycling. She pointed out that by adding the words "that is not an institutional generator" removes institutional generators from the exemption of having to pay for the collection and recycling. She added that this means the businesses or commercial establishments could be charged for the collection and recycling of batteries when the consumer brings them back.

Brief discussion followed.

Steve Roberts commented that industry now accepts the fact that the department is going to promulgate rules in this area and that is no longer an issue because industry's concerns have been worked out.

Chairperson King asked how the department anticipates handling the issue regarding lack of a plan on the part of the sealed lead acid battery manufacturers.

Ms. Hay stated that the department is expecting that the manufacturers of sealed lead acid batteries will provide the primary push to work with the distributors and retailers to insure an adequate collection and recycling program will be set up.

Mr. Roberts explained that the PRBA also has in its membership the lead acid battery people and this is the only point of contention left in the rules. He noted that industry is satisfied with all other aspects of the rule but this is one remaining issue that needs to be worked on. He related that the lead acid people feel that they are being discriminated against because they have not come in ahead of time with their plan. Mr. Roberts stated that he has been told that the lead acid battery people have a plan in progress, and their interpretation of the proposed rules was that they did not have to have a plan until May 1, 1996. He related that they did not see any reason to have the plan submitted prior to that until the proposed compromise came about. He noted that their basic concern is the same as the nickel battery people had, and that is that all

participants in the stream of commerce should be responsible for participating in the responsibility of the program. He added that they do not see any statutory justification for making a distinction between the two groups of manufacturers.

Ms. Hay stated that it has consistently been the nickel cadmium battery manufacturers who have been participating with the department and among themselves to organize and develop a plan for collection and recycling of the batteries. She noted that there has not been any significant participation from the lead acid battery manufacturers during the development of the rules. Also, they have not put together a plan and there has not been the same level of cooperation among those manufacturers. Ms. Hay stressed that there is evidence on the part of the nickel cadmium battery manufacturers that will insure adequate collection and recycling of their batteries. She related that there is no such evidence on the part of the lead acid battery manufacturers, so staff has a concern that without responsibility resting on the manufacturers in that area there will be an inaction to collect and recycle those batteries.

Discussion followed regarding the types of batteries affected and possible future changes to the rules.

Terrance Townsend stated that the rules seem to discriminate against one group and he would like to handle them both the same way. He added that the department has not heard from the lead acid battery forks but, theoretically, they did not have to respond yet anyway.

Chairperson King asked about taking out the reference to nickel cadmium batteries in the first line of 145.4(1)"a", which would change the sentence to read as follows: "It is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996.

Terrance Townsend stated that he would favor that revision.

Kathryn Murphy asked what effect that change would have in the future if no one takes the lead on the lead acid battery recycling program. She inquired as to what kind of recourse would be available.

Steve Roberts interjected that the statute gives the department and the Commission authority to go after anyone in the stream of commerce who fails to develop a plan. He expressed concern about "off-shore" manufacturers that may have chosen not to participate in the PRBC program or to have their own individual program, and are in effect thumbing their noses at the Iowa law.

Chairperson King asked what the consumers role would be in the chain of commerce.

Ms. Hay stated that in the manner used in the Code the consumer would not be considered a part of the stream of commerce.

Discussion followed in regard to the responsibility factor; manufacturers covered in the RCBA plan; and what recourse could be taken if the lead acid battery manufacturers plan is not submitted by the set date.

William Ehm stated that to single out the manufacturers in paragraph "b" would be somewhat inappropriate since they are not required to submit their plan yet, adding that one must rely on good faith that they will submit their plan.

Michael Fesler stated that trying to shift responsibility solely to the manufacturers is asking for trouble. He added that he agrees with the language change suggested by Chairperson King.

Chairperson King repeated her suggestion to change the first sentence in 145.4(1)"a" by deleting the words "In the case of waste nickel cadmium batteries," which would then make it read as follows: "It is the responsibility of all participants in the stream of commerce, either individually or collectively, to establish and maintain a system or systems for the proper collection, transportation and recycling or disposal of waste batteries, specified in 455D.10A(3)"a", for consumers and institutional generators in Iowa, beginning July 1, 1996." She additionally suggested deleting the complete section numbered 145.4(1)"b".

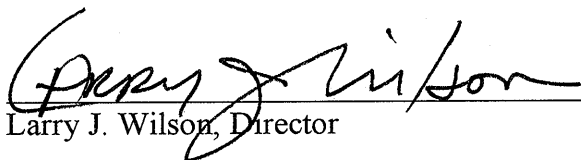
Motion was made by Terrance Townsend to revise the rule language as suggested by Chairperson King. Seconded by William Ehm. Roll call vote was taken and "Aye" vote was cast by Commissioners Murphy, Priebe, Townsend, Draeger, Ehm, Fesler, Mohr, and King. Motion carried unanimously.

APPROVED AS AMENDED

Steve Roberts thanked the Commission for their tolerance, time, and consideration shown to industry on a very complicated issue.

ADJOURNMENT


With no further business to come before the Environmental Protection Commission, Chairperson King adjourned the meeting at 9:55 a.m. Monday, July 6, 1995.



Larry J. Wilson, Director



Rozanne King, Chair



Charlotte Mohr, Secretary

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Household Batteries--Chapter 145

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